

## STATEMENT OF FACTS

On January 6, 2021, your affiant, Michael Attard was on duty and performing my official duties as a Special Agent. Specifically, I am assigned to the Counter-terrorism squad tasked with investigating criminal activity in and around the Capitol grounds. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws. The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Vice President Mike Pence was present and presiding in the Senate chamber.

With the joint session underway and with Vice President Mike Pence presiding, a large crowd gathered outside the U.S. Capitol. Temporary and permanent barricades surround the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. At such time, the joint session was still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows. Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

On January 6, 2021, the subject who identified himself to a New York Post reporter in an interview was profiled in a New York Post article titled, “NYC man says he stormed US Capitol to fight stolen election.” In the video interview, “Aaron” explained his actions by stating: “the election was stolen”, “we were cheated”, and “I don’t think 75 million people voted for Trump. I

think it was close to 85 million”. “Aaron” continued to tell the interviewer that he traveled from Brooklyn, NY. The New York Post video interview was conducted inside the Capitol Building, during which “Aaron” is observed carrying what appears to be a US Capitol Police riot shield containing the US Capitol Police logo, as well as wearing a US Capitol Police officer’s bullet proof vest labeled “Police”. An image captured from the video interview is provided below<sup>1</sup>. In the video interview “Aaron” states that he took a police riot shield that he found on floor. “Aaron” then motioned to the police vest on his chest, in what appears to be him indicating that he also found that item on the floor and took it into his possession. He also states that he found a hat on the ground but he returned that item to a police officer because that might be someone’s personal item. The police riot shield and police vest are items of value belonging to the United States, specifically the US Capitol Police. The police vest is comprised of a carrier, body plates within the vest, and side ballistics, with a total value of \$1,905.00. The riot shield is valued at \$256.65.



On January 7, 2021, your affiant located a second article from the New York Post titled, “NYC man who breached US Capitol is son of prominent Brooklyn judge”. The article identified “Aaron” as Aaron Mostofsky. A search of New York State Department of Motor Vehicle images associated with Aaron Mostofsky revealed a photograph that matched the depiction of the individual interviewed within the US Capitol known as “Aaron”. The image from the New York State Department of Motor Vehicles is provided below:

<sup>1</sup> At one point in the video interview the camera pans down to more clearly show the police riot shield, which “Aaron” is holding up by resting the bottom of the ground. The shield clearly shows the insignia of the U.S. Capitol Police.



On January 7, 2021, an FBI review of social media accounts belonging to Aaron Mostofsky identified an Instagram account “aaron\_mostofsky\_official” which contained videos taken both inside and outside the US Capitol taken by a male believed to be Mostofsky. One video posted on January 6, 2021, which appears to show Mostofsky on a bus, and appears to be a self-taken video, was labeled “DC bound stopthesteal”.

On January 8, 2021, a search warrant was issued by the United States District Court for the Eastern District of New York related to the Instagram account “aaron\_mostofsky\_official”. The user of the account was confirmed as Aaron Mostofsky. Review of these records show additional posts regarding the Mostofsky presence in the US Capitol Building. In particular, the records show that on January 7, 2021, a photo was sent to Mostofsky by another user showing him within the US Capitol carrying a US Capitol Police riot shield containing the US Capitol Police logo, as well as wearing a US Capitol Police officer’s bullet proof vest labeled “Police.” The photo is consistent with images from Mostofsky’s news interview from within the U.S. Capitol, including Mostofsky’s attire. The shared photo is shown below.



A message was sent to Mostofsky regarding the photo saying: "Your famous." In response, Mostofsky, under his username aaron\_mostofsky\_official, stated: "IK unfortunately." The sender asked: "why unfortunately." Mostofsky responded "Cause now people actually know me." Mostofsky in this conversation confirms that he is the person in the photo wearing and holding property of the U.S. Capitol Police. During the same conversation Mostofsky also describes his presence in the U.S. Capitol stating: "But it was like I'm here now how did I get there." In a separate post made by Mostofsky at approximately 6:09 AM on January 6, 2020, he indicates that he is "...on this bus going to DC." Furthermore, when trying to coordinate meeting up with a friend within the group on January 6, 2020, Mostofsky's message states: If we find each other look



for a guy looking like a caveman.” He later states, in a likely reference to the presidential election: “Even a caveman knows it was stolen.”


Further research identified a Facebook account, user ID: 763517572, believed to belong to Aaron Mostofsky, in which Mostofsky posted the comment on November 7, 2018: “Since the republicans lost the house I have the following questions 1 when and where are we protesting/rioting...”

Based on the foregoing, your affiant submits there is probable cause to believe that Aaron Mostofsky violated 18 U.S.C. § 641, which makes it a crime for a person to embezzle, steal, purloin, or knowingly convert to his use or the use of another, or without authority, sell, convey or dispose of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or receive, conceal, or retain the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted. As the value of the thing taken is greater than \$1,000, there is probable cause to believe Aaron Mostofsky has committed a felony offense.



Also, your affiant submits that there is probable cause to believe that Aaron Mostofsky, violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do so; (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Finally, your affiant submits there is also probable cause to believe that Aaron Mostofsky violated 40 U.S.C. § 5104(e)(2)(D) & (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct

in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

  
Special Agent Michael Attard  
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 11<sup>th</sup> day of January 2021.

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ZIA M. FARUQUI  
U.S. MAGISTRATE JUDGE